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(2)

Division Bench (Criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR,(M.P.)

CRIMINAL APPEAL No. 1427 OF 2000

(5467)

Filed on 27/5/2000
Shri R.K. Patel
Advocate

APPELLANT (IN JAIL) : Kawasi Lakha son of Shri Botimuriya, aged about 60 years, r/o Sautnar, Police Station Tongpal,District: Dantewara,(M.P.)

-Vs.-

RESPONDENT : State of Madhya Pradesh through Police Station Tongpal,District: Dantewara,(M.P.)

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEEDURE.

Against the conviction and sentence passed by IInd A.S.J.Jagdalpur,Bastar,(M.P.)(Learned Shri Yogesh Mathur) in Sessions Trial No.46/2000-State Vs.Kawasi Lakha.

CONVICTION	SENTENCE
O/U/S. 302 of I.P.C.	Life imprisonment with fine of Rs.500/-, In default of fine 1 year R.I.

(41)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.1427/.. **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo, Ag.C.J. and
Hon'ble Mr. Sunil Kumar Sinha, J.

2-2-2007

Mr. R.K. Jain, counsel for the appellant.

Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, Ag.C.J.: -

This appeal is directed against the judgment of conviction and order of sentence dated 28-3-2000 passed by the 2nd Additional Sessions Judge, Jagdalpur, in Sessions Trial No.46/2000, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C., sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one year.

The case of the prosecution is that on 30-11-1999 at about 6 p.m. accused/appellant Kawasi Lakha attacked his elder brother namely, Kawasi Burka with an axe on his head & chest and thereby committed the murder of Kawasi Burka. The incident was witnessed by Kawasi Sukda Muriya, nephew of the deceased who lodged the report in Police Station: Tongpal on 1-12-1999, on which offence under section 302 of the I.P.C. was registered. The Investigating Officer after registering the case left for the scene of occurrence and prepared inquest Ex.P-4 on the body of Kawasi Burka. While in police custody, the accused gave memorandum Ex.P-5, in pursuance of

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..C.A.1427/ **सन्** 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

that, axe, the weapon of the offence, was seized under Ex.P-6. The Investigating Officer also seized plain soil and bloodstained soil from the place of occurrence under Ex.P-7. The body of Kawasi Burka was sent for post-mortem examination to Primary Health Centre, Tongpal, where Dr. L.L. Dhankar conducted post-mortem and prepared the post-mortem report (Ex.P-1) in which he opined that the cause of death was due to brain haemorrhage caused by fatal head injury and the death was homicidal in nature.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Sukma, who in turn committed the case to the Sessions Judge, Jagdalpur, from where learned 2nd Additional Sessions Judge, Jagdalpur, received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined six witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which the accused denied the material appearing against him in prosecution evidence and stated that he is innocent, he has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing counsel for respective parties and perusal of the record, convicted and sentenced the accused as aforementioned.

We have heard Mr. R.K. Jain, learned counsel for the appellant and Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent.

Mr. R.K. Jain has not disputed the homicidal death of Kawasi Burka. Moreover, Dr. L.L. Dhankar (PW-1) has stated in his evidence that on 2nd

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..G.A.1427/ **सन्** 200 0

आदेश पत्रक (पूर्वानुबद्ध)

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December, 1999 he conducted post-mortem on the body of Kawasi Burka and noticed four injuries on the body of Kawasi Burka. There was an incised wound on the left parietal region, another incised wound on the right cheek and bone beneath the injury was fractured. There was lacerated wound above the right eye and another lacerated wound on left side of the chest. On account of the injuries on head, parietal bone and zygomatic bone were fractured into pieces and the death was homicidal in nature. In view of the above evidence, it is established that the death of Kawasi Burka was homicidal in nature.

As far as involvement of the accused/appellant in the crime in question is concerned, the prosecution has tried to establish the crime based on the evidence of Kawasi Sukda (PW-2) as also the evidence of Madkami Bideo (PW-3). Kawasi Sukda (PW-2) in examination-in-chief has stated that he saw the accused attacking his uncle with an axe, whereas in para 3 of his cross-examination, he has stated that when he went to serve food to Kawasi Burka in his room, there was darkness, after burning fire he saw that there were injuries on the head of Burka, blood was oozing out of the injuries, none was present there, he immediately returned to his house, informed his wife, thereafter, a meeting was convened and in that meeting, the accused made extra judicial confession. Therefore, his evidence in the examination-in-chief that he witnessed the crime in question while the accused was attacking his uncle, stands demolished as this witnesses himself in the cross-examination has stated that when he went in Kothar, Kawasi Burka (his uncle) was lying in injured and dead condition. Therefore, the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....CR.A.1427/ **सन्** **200** ....

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prosecution has failed to establish that this witness witnessed the crime in question while the accused was attacking Kawasi Burka.

As far as the extra judicial confession made before Kawasi Sukda (PW-2) & Madkami Bideo (PW-3) is concerned, in the examination-in-chief Kawasi Sukda (PW-2) has stated that in the Panchayat the accused made extra judicial confession that as Kawasi Burka was practicing witchcraft and on account of that his wife died, that is why he committed the murder of Burka by attacking with axe. But in cross-examination paras 5 & 6, he has stated that after the Police came on Thursday, the Panchayat was convened and it is correct to say that when the Police put pressure only then the accused made extra judicial confession. Madkami Bideo (PW-3) has stated that in the Panchayat, the accused made extra judicial confession that he has committed the murder of Burka. In cross-examination para 2, he has also stated that the Police convened the Panchayat. In examination-in-chief, he has stated that the Police people in front of the villagers enquired from the accused, then the accused has stated that he committed the murder of Burka. Therefore, the extra judicial confession theory also stands demolished because Kawasi Sukda (PW-2), nephew of the deceased, has stated that the Panchayat was convened in front of the Police and in that, on account of pressure of the Police, the accused made extra judicial confession.

In view of the above, the extra judicial confession made in presence of the Police cannot be held to be admissible. Therefore, the prosecution

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CG.A.1427/ **सन् 2006**

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	has failed to establish that the accused was the author of the crime in question. In the circumstances, conviction and sentence imposed upon the accused/appellant cannot be sustained. In the result, the appeal succeeds and the same is allowed. Conviction of the appellant under Section 302 of the I.P.C. and sentence imposed upon him under that Section are set aside. The accused is acquitted of the said charge. He is in detention, therefore, he be set at liberty forthwith, if he is not required in any other case. **Sd/-** **Acting Chief Justice**	**Sd/-** **SUNIL KUMAR SINHA** **Judge**
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